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Nos. 13-354 and 13-356

In the

Supreme Court of the United States

KATHLEEN SEBELIEUS, *et. al.*, *Petitioners*,

v.

HOBBY LOBBY STORES, INC., *et al.*, *Respondents.*

CONESTOGA WOOD SPECIALTIES CORP., *et al.*,
Petitioners

v.

KATHLEEN SEBELIUS, *et al.*, *Respondents.*

On Writs of Certiorari to the United States Courts of Appeals for the Third and Tenth Circuits

AMICI CURIAE BRIEF OF CENTER FOR CONSTITUTIONAL JURISPRUDENCE AND ST. THOMAS MORE SOCIETY OF ORANGE COUNTY IN SUPPORT OF HOBBY LOBBY AND CONESTOGA, *et al.*

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QUESTION PRESENTED

Do the Religion Clauses of the First Amendment permit the federal government to compel business owners to violate their religious beliefs in the absence of a compelling governmental interest?

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IDENTITY AND INTEREST OF AMICI CURIAE

Amicus Center for Constitutional Jurisprudence[1] was established in 1999 as the public interest law arm of the Claremont Institute, the mission of which is to restore the principles of the American Founding to their rightful and preeminent authority in our national life, including the proposition that the Founders intended to protect religious liberties of all citizens and to encourage participation in religious activities as a civic virtue. In addition to providing counsel for parties at all levels of state and federal courts, the Center has participated as amicus curiae before this Court in several cases of constitutional significance, including *Van Orden v. Perry*, 545 U.S. 677 (2005); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); and *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).

The Center is vitally interested in preserving the freedom of religion as one of the central liberties protected by the Constitution. The First Amendment prohibits interference with the free exercise of religion and was understood to prohibit government from compelling actions in violation of religious belief. The liberty recognized in the First Amendment

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[1] Pursuant to this Court's Rule 37.3, a global consent to amicus curiae briefs was filed with the Clerk by petitioners; consent from respondents is being filed simultaneously with this brief.

Pursuant to Rule 37.6, amici curiae affirm that no counsel for any party authored this brief in any manner, and no counsel or party made a monetary contribution in order to fund the preparation or submission of this brief. No person other than Amici Curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

is not limited activities taking place in churches and other houses of worship. The Founders understood that "religion" extended beyond mere private belief to encompass how citizens conducted themselves in every aspect of their daily lives.

Amicus St. Thomas More Society of Orange County is a not for profit California corporation, an association of more than 1,000 Roman Catholic California lawyers and judges. The Society is vitally concerned with the issue of religious liberty as the "first liberty," the predicate to the other liberties protected by civil government because religious liberty as historically understood is necessary for religious practice, religious practice necessary for a virtuous citizenry, and a virtuous citizenry is the only populace capable of self-government. The Society is vitally concerned that religious liberty, including freedom from governmental compulsion, is not limited to worship on Sundays, but indeed the Society Mission Statement urges integration of Christian virtue in every aspect of a member's life in the spirit of the organization's namesake, St. Thomas More of a "Man for All Seasons" fame.

SUMMARY OF ARGUMENT

The argument of the United States evinces a fundamental misunderstanding of religion. The Christian[2] religion, as understood by the Founders

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[2] Amici focus on the Christian religion since that was the belief system shared by the Founders. *See* Joseph Story, 2 COMMENTARIES ON THE CONSTITUTION §§ 1874-77 (Little, Brown & Co. 1858). Other religions, however, are similarly communal in practice and establish rules for a way of life. *See, e.g.*, Leviticus, THE NEW OXFORD STUDY BIBLE at Hebrew Bible 142 (Michael D. Coogan, ed.) (Oxford 2007).

and as practiced today, is a way of life. Religion extends well-beyond a weekly worship service. Instead, religion informs our every action, both in business and private interactions. The Founders understood this and implemented laws and practices to forbid government action that compelled violation of religious belief. These early practices inform the original understanding of the Religion Clauses of the First Amendment. Based on this understanding, in the absence of a compelling governmental interest, the United States may not compel people of faith to take actions in violation of their religious beliefs.

ARGUMENT

I. Religion, as Understood By The Founders and This Court's Decisions, Is a Communal Activity Affecting the Way Citizens Conduct Their Lives

In the position it presses, the United States, proposes a new constitutional test holding that individuals lose their religious liberty when they operate a "secular, for-profit" company.[3] The qualifiers defeat the proposition under this Court's current precedents. The recognition that some corporations and groups are entitled to the First Amendment right of Free Exercise of religion defeats any argument that petitioners' family-owned corporation is not entitled to Free Exercise rights. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 778 n.14 (1978). This

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[3] The Pilgrims who settled at Plymouth Rock helped form the for-profit Massachusetts Bay Company to accomplish their purposes in America. The Company Charter acknowledges that spread of the "Christian Fayth" was one of the express purposes of the venture. The Charter of Massachusetts Bay (1629) (http://avalon.law.yale.edu/17th_century/ mass03.asp)

Court has long recognized that organizations, including corporations, engaged in religious activity are protected by the First Amendment. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 525 (1993); *see Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission*, 132 S. Ct. 694, 706 (2012).

This Court has not limited this recognition to purely religious operations. *See Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 330 (1987); *Bob Jones Univ. v. United States*, 461 U.S. 574, 579-580 (1983). The position urged by the government in these cases means that the hospital run by the Roman Catholic Church in *Bradfield v. Roberts*, 175 U.S. 291, 297-99 (1899), was not pursuing a religious mission protected by the First Amendment. It would mean that the Society of Sisters of the Holy Names of Jesus & Mary were not pursuing a religious mission protected by the First Amendment in the operation of their school which included "[s]ystematic religious instruction and moral training according to the tenets of the Roman Catholic Church." *Pierce v. Society of Sisters*, 268 U.S. 510, 531-32 (1925). This is a radical proposition that should be rejected by this Court.

This Court has looked to the "historic function" of a particular constitutional liberty to determine whether it was "purely personal" or could be exercised by a corporation. *See Bellotti*, 435 U.S., at 778 n.14. Even if one dismisses the statement in *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 365 (2012), that this "Court has recognized that First Amendment protection extends to corporations," the issue of whether religion was a purely personal liber-

ty seems to have been laid to rest in *Roberts v. Jaycees*, 458 U.S. 609 (1984). There, this Court noted that an individual's right to worship could not be protected from state interference without the freedom to engage in group efforts. *Id.*, at 622.

Our history shows that religion has always been understood to be a communal, rather than a purely individual, activity. Further, the exercise of religion was never thought to be limited to what happens inside a house of worship. Instead, the Founders understood religion as shaping the citizen's way of life. This understanding continues today and is evidenced in companies like Conestoga Wood Specialties, Hobby Lobby, and organizations of business executives promoting religious values in their companies' activities.

The communal nature of the Christian Religion is shown first in its texts. In the Gospel of Matthew, Jesus is reported saying "For where two or three are gathered in my name, I am there among them." Matthew 18:20, THE NEW OXFORD STUDY BIBLE at New Testament 35 (Michael D. Coogan, ed.) (Oxford 2007). It should be no surprise then that the Founders encouraged group prayer and action as a means of both protest and thanksgiving.

Mercy Otis Warren reports that the colonies generally observed prayer and fasting on June 1, 1774 in protest of the Boston Port Bill. Mercy Otis Warren, 1 HISTORY OF THE RISE, PROGRESS, AND TERMINATION OF THE AMERICAN REVOLUTION at 133 (1808) (Liberty Fund 1988). President Washington proclaimed November 26, 1789 as a day of "public thanksgiving and prayer." George Washington, Thanksgiving Proclamation, in W.B. Allen, GEORGE

WASHINGTON, A COLLECTION at 479 (Liberty Classics 1988). In that same year, Congress authorized the appointment of paid chaplains so that it could open its session with prayer. *Marsh v. Chambers*, 463 U.S. 783, 788 (1983). This continued the practice of the Continental Congress to open each session with prayer. *Id.*, 787.

As this Court has noted "We are a religious people whose institutions presuppose a Supreme Being." *Zorach v. Clauson*, 343 U.S. 306, 313 (1952). The Founders understood this and relied on it in the design of government. During the ratification debates, there was concern over the ban on religious tests in Article VI. Religion (and the Christian Religion in particular), in the view of the objectors, was best "calculated ... to make good members of society." Caldwell, Debate in North Carolina Ratifying Convention, July 30, 1788, reprinted in 5 THE FOUNDERS' CONSTITUTION at 92 (Phillip B. Kurland and Ralph Lerner, eds. 1987). Thus, elements of the practice of religion were built in to the Constitution – specifically the requirement of an Oath. As James Iredell argued, an oath is a "solemn appeal to the Supreme Being, for the truth of what is said, by a person who believes in the existence of a Supreme Being and in a future state of rewards and punishments." *Id.*, at 91.

This understanding of the nature of an oath was applied in legal proceedings, with courts reminding witnesses of their religious duty to tell the truth. *See In re Williams*, 29 F. Cas. 1334, 1340 (E.D. Penn. 1839). The view was that the crime of perjury standing alone was not sufficient. The law required a belief by the witness that a violation of the oath would be punished by a Supreme Being. *United States v.*

Kennedy, 26 F. Cas. 761 (D. Ill. 1843). Exemptions from the oath were only granted if the individual's religion prohibited oaths. *See In re Bryan's Case*, 1 Cranch C.C. 151; 4 F. Cas. 506 (D.C. Cir. 1804).

Because citizens were expected to exercise their religion in their civic life, religious belief was important to the citizen's qualification to sit on a jury. In *Reason v. Bridges*, 1 Cranch C.C. 477; 20 F. Cas. 370 (D.C. Cir. 1807), the court was called on to decide whether a party challenging a juror could examine them on the religious doctrine of their faith or must present separate proof of that doctrine.

Other evidence that the Founders understood that exercise of religion took place outside houses of worship is found in state constitutions of the time. Maryland's Constitution of 1776 guaranteed religious liberty "to all people professing the Christian religion" and provided that no person should be molested "by law" in their belief or religious practice so long as they did not breach the peace, injure others, or violate laws of morality. Francis Newton Thorpe, 3 THE FEDERAL AND STATE CONSTITUTIONS at 1689 (Hein 1993). The New York Constitution of 1777 granted "liberty of conscience, but specified that this freedom was not to be construed to "excuse of acts of licentiousness, or justify practices inconsistent with the peace or safety of this State." *Id.*, vol. 5 at 2637. Massachusetts' 1780 Constitution had similar provisions. *Id.*, vol. 3 at 1889.

These constitutions show that the founding generation understood that religion is practiced in public as part of our daily life. The early state constitutions were willing to protect those practices so long as they did not result in a breach of the peace.

This idea that religion is practiced in the way we conduct our lives, including the way we run our businesses, is not just a quaint notion from a bygone era. The families behind Conestoga Wood Specialties and Hobby Lobby are not alone in their belief that their religion should inform their way of life in all aspects, professional as well as personal. In addition to the many companies owned and operated by people with similar motivations, business executives gather to encourage each other to live their faith.

A broad-based organization of this type is The High Calling, an organization that provides resources for "[h]onoring God in our daily work."[4] The organization publishes articles and provides resources for implementing religion in our work life. CEO's and other top executives of the Catholic faith can participate in Legatus, an organization that seeks to help executives "To study, live and spread the Catholic faith in our business, professional and personal lives."[5]

Another example is found in interfaith prayer breakfasts where business leaders will share how they implement their religious values in the way they manage their company.[6] A national prayer breakfast has been held since members of Congress invited President Eisenhower to join them for the

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[4] http://www.thehighcalling.org/about (last visited October 17, 2013).

[5] http://www.legatus.org/mission (last visited October 17, 2013).

[6] *E.g.*, http://www.atlantarotary.org/2012-atlanta-interfaith-business-prayer-breakfast (Atlanta 2012 prayer breakfast) (last visited October 17, 2013).

event in 1953.[7] Since that time, Presidents have annually attended the event and spoke about how their faith informs the way they carry out the duties of their office.[8]

People of faith do not leave their religion at the worship-house door. As the Founders understood, they live their religion in their daily civic life including in the manner in which they run their business. Historical practice demonstrates that the First Amendment's protection of religious liberty was not intended to be confined to individual activities inside a house of worship. It was meant to protect individuals and groups in all aspects of their daily lives.

II. The Founders Understood Free Exercise of Religion as Prohibiting Government Compulsion to Violate Religious Strictures.

The text of the Religion Clauses guarantees Free Exercise of Religion and prohibits federal Establishments. The text does not explain what was meant by "Free Exercise," however, and the Senate Debates (where the language was finalized) were not recorded. There are nonetheless important clues to the scope of the religious liberty that the Founders sought to protect in the 1787 Constitution as well as actual practices of state governments at the time of the founding.

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[7] http://thefellowshipfoundation.org/activities.html (last visited October 17, 2013).

[8] *E.g.*, http://www.whitehouse.gov/the-press-office/2013/02/07/remarks-president-national-prayer-breakfast (Remarks of President Obama) (last visited October 17, 2013).

A. The Oath and Religious Test Clauses support an interpretation of the Free Exercise Clause as prohibiting government compulsion to violate religious strictures.

The 1787 Constitution contained an express recognition of religion, a protection for free exercise of religion for those situations where the Founders foresaw a potential conflict between federal practice and individual rights, and a provision designed to protect against establishments. All of this was contemplated by the Oath Clause and the Religious Test Clause.

The Oath Clause of Article VI provides:

> The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath *or affirmation*, to support this Constitution

U.S. Const., Art. VI (emphasis supplied). Similarly, Article II requires the President "[b]efore he enter on the Execution of his Office, he shall take the following Oath *or Affirmation*:--'I do solemnly swear (*or affirm*) ....'"

The exception for "affirmations" was an important addition to preserve religious liberty. As noted above, oaths were not sworn under penalty of secular punishment. The concept of an oath at the time of the 1787 Constitution was explicitly religious. To take an oath, one had to believe in a Supreme Being and some form of afterlife where the Supreme Being would pass judgment and mete out

rewards and punishment for conduct during this life. James Iredell, Debate in North Carolina Ratifying Convention, *supra*; Letter from James Madison to Edmund Pendleton, 8 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION, (John P. Kaminski, *et al.* eds. (Univ. of Virginia Press (2009)) at 125 ("Is not a religious test as far as it is necessary, or would operate, involved in the oath itself?"). Only those individuals that adhered to this religious belief system were allowed to swear an oath. The oath requirement was explicitly religious in nature and the exception provided for affirmations was to accommodate those who believed their religion prohibited them from "swearing an oath," but who still believe in an after-life that includes judgment.

The exception to the Oath Clause was for adherents of those religious sects that read the Gospel of Matthew and the Epistle of St. James as prohibiting Christians from swearing any oaths.[9] In the absence of an exception, then, Quakers and Mennonites would have been barred from state and federal office. Their choice would have been to forego public office or accept the compulsion to take an action prohibited by their religion. The Constitution, however, resolved

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[9] "'But I say to you, Do not swear at all, either by heaven, for it is the throne of God, or by the earth, for it is his footstool, or by Jerusalem, for it is the city of the great King. And do not swear by your head, for you cannot make one hair white or black. Let your word be 'Yes, Yes' or 'No, No'; anything more than this comes from the evil one.'" Matthew 5:34-37, THE NEW OXFORD STUDY BIBLE, *supra*, at New Testament 15. "Above all, my beloved, do not swear, either by heaven or by earth or by any other oath, but let your 'Yes' be yes and your 'No' be no, so that you may not fall under condemnation." James 5:12, THE NEW OXFORD STUDY BIBLE, *supra*, New Testament at 392.

this concern by providing public office holders could swear an oath or give an affirmation. This provision was specifically targeted at these religious sects. This religious liberty exception to the oath requirement excited little commentary in the ratification debates. The founding generation was already comfortable with this type of exception and many states had similar provisions in their state constitutions. These provisions did not create a specific, limited accommodation, but instead protected freedom of conscience in the instances the founding generation expected government compulsion to come into conflict with religious belief.

This exception for "affirmations" included in the Oath Clause is significant for what it tells us about the scope of religious liberty that the Framers sought to protect with both the 1787 Constitution and the First Amendment. The accommodation did not simply welcome Quakers and Mennonites into state and federal government offices. It demonstrated recognition that an oath requirement would put members of these sects in a position of choosing whether to forgo government service or whether to violate the fundamental tenets of their religion. The Framers chose to protect people of faith from government compulsion to violate their religion.

The second protection of religious liberty contained in the 1787 Constitution was the prohibition on religious tests for office holders in Article VI. This was a departure from the law in a number of the states.

A number of state constitutions at the founding had some form of Free Exercise guaranty, but joined that guaranty with a religious test. For instance the

Maryland Constitution required office holders to subscribe "a declaration of [their] belief in the Christian religion." THE CONSTITUTIONS OF THE SEVERAL INDEPENDENT STATES OF AMERICA (Rev. William Jackson ed., 2d ed. 1783) (reproducing the congressional resolution of December 29, 1780) at 246 (Md. Const. part A, art. XXXV (1776)). Members of the Pennsylvania Legislature were required to make a more detailed pledge: "I do believe in one God, the Creator and Governor of the Universe, the rewarder of the good, and the punisher of the wicked. And I do acknowledge the scriptures of the Old and New Testament to be given by divine inspiration." *Id.* at 191 (Pa. Const. ch. 2, § 10 (1776)). Delaware's oath of office required the profession of a Trinitarian belief while providing a right of free exercise and prohibiting the "establishment of any one religious sect in this State in preference to another." *Id.* at 229 (Del. Const. art. 22 (1776)), 233 (Del. Const. art. 29 (1776)). The Framers of the federal constitution rejected this dual approach of guarantying free exercise of religion on the one hand but requiring a religious test on the other. Instead, the Framers sought to maximize religious liberty.

By prohibiting religious tests the Framers accomplished two purposes. First, as Madison argued, this provision prohibited Congress from establishing a religion. Letter of James Madison to Edmund Randolph, 17 THE DOCUMENTARY HISTORY OF THE RATIFICATION, *supra* at 63; *see also* Rev. Backus, Convention Debates, 6 THE DOCUMENTARY HISTORY OF THE RATIFICATION, *supra* at 1421-22 ("[I]t is most certain, that no way of worship can be established, without any religious test."). Although the Framers argued that Congress had no explicit power to estab-

lish a religion under any of the provisions in Article I, there was a concern that in creating new offices and defining the qualifications for those offices that Congress could limit those offices to members of a particular sect. Governor Randolph, Convention Debates, 9 THE DOCUMENTARY HISTORY OF THE RATIFICATION, *supra*, at 1100. If only members of a particular sect could serve in government, the federal government would then take on the character of the English system where public officials had to be members of the state church in order to hold office. Michael McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2113 (2003). Such a system would, it was feared, ultimately lead to the type of coercion that led the original colonist to set out for America in search of the freedom to practice their faith. The ban on religious tests, however, prevented any one religious sect from capturing government. The combination of the ban on religious tests and the number or religious sects in America at the time of the Constitution was thought the best security against a federal establishment. Governor Randolph, Convention Debates in 9 THE DOCUMENTARY HISTORY OF THE RATIFICATION, *supra*, at 1100-01. The importance of avoiding a federal establishment was two-fold. First it left the issue in the hands of the states, allowing the states to maintain their own establishments and allowing citizens to continue to move between states if they were dissatisfied with a state's establishment. Second, and important for this case, the avoidance of a federal establishment offered the best protection of religious liberty, a protection later enshrined in the First Amendment.

Experience with the established church in England convinced the Framers of the need for this provision. In order to serve in government under the English system, one had to, among other things, receive the communion in the Church of England within a short period after taking office. McConnell, *supra* at 2176. As with the oath, one had the option of either not serving in office or foreswearing one's own religious beliefs. Recognizing the diversity of religious belief in America,[10] the Framers chose to avoid compelling the citizens of the new country to violate their religious beliefs. This freedom from government compulsion to foreswear one's religious beliefs lies at the core of religious liberty clauses in the First Amendment. Historical practice at the time of the founding confirms this analysis.

B. Historical practice at the time of the founding support an interpretation of the Free Exercise Clause as prohibiting government compulsion to violate religious strictures.

As noted above, even states that had a religious test also sought to guaranty free exercise of religion. State efforts to ensure religious liberty again focused on preventing government compulsion to violate one's religious beliefs. Thus, Delaware, New Hampshire, New York, and Pennsylvania included exemptions from militia service for Quakers in their state constitutions. Stephen M. Kohn, JAILED FOR PEACE, THE HISTORY OF AMERICAN DRAFT LAW VIOLATORS 1658-1985 (Praeger 1987). Statutes containing a

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[10] Admittedly, the Framers were mostly concerned with protecting the diversity of Christian/Protestant sects. *See* Joseph Story, . *supra* at §1877 (Little, Brown 1858)

similar exemption from militia service for Quakers were enacted in Georgia, Rhode Island, and Virginia. Margaret E. Hirst, THE QUAKERS IN PEACE AND WAR, (Garland 1972) at 331, 396-97. These early protections accepted that Quaker religious belief forbade the use arms and chose to honor religious liberty even at the expense of additional soldiers,

This protection of religious liberty is most clearly illustrated during the Revolutionary War. If ever there was a "compelling governmental interest," certainly it was the muster of every able-bodied man to prepare to defend towns from the oncoming British army. Yet George Washington would not compel Quakers to fight. Even when some Quakers were forced to march into Washington's camp at Valley Forge with muskets strapped to their back, Washington ordered their release. *Id.* at 396.

Washington's commitment to this religious freedom was also demonstrated in his orders issued to towns that were in the path of the British army's march. In January of 1777 as the British army advanced on Philadelphia, Washington ordered "that every person able to bear arms (*except such as are Conscientiously scrupulous against in every case*) should give their personal service." George Washington Letter of January 19, 1777 in JAILED FOR PEACE, *supra* at 10 (emphasis added). The call for every man to "stand ready ... against hostile invasion" was not a simple request. The order included the injunction that "every person, who may neglect or refuse to comply with this order, within Thirty days from the date hereof, will be deemed adherents to the King of Great-Britain, and treated as common enemies of the American States." Proclamation is-

sued January 25, 1777 in GEORGE WASHINGTON, A COLLECTION, *supra* at 85. Again, however, the order expressly exempted those "conscientiously scrupulous against bearing arms." *Id.* Even in most extreme need for militia to resist the British army, Washington's army would not compel Quakers and Mennonites to violate the commands of their religion.

After the Revolution, states continued to protect against compulsion to violate religious beliefs. State constitutions in Maryland and South Carolina, for example, included protection in their constitutions for adherents of religious sects that forbade the swearing of oaths. South Carolina's constitution of 1778 allowed people who were called as witnesses to affirm the truth of their statements "in that way which is most agreeable to the dictates of his own conscience." Thorpe, *supra* at vol. 6, 3255-56. Similarly, Maryland's constitution of 1776 explicitly acknowledged the religious nature of an oath and provided an exception from any oath requirement for "Quakers, those called Dunkers, and those called Menonists, holding it unlawful to take an oath on any occasion, ought to be allowed to make their solemn affirmation, in the manner that Quakers have been heretofore allowed to affirm." *Id.*, at vol. 3, 1690.

These examples demonstrate that the founding generation understood religious liberty to mean that government is not permitted to compel a citizen to violate his religious beliefs. That understanding of religious liberty should inform this Court's interpretation of the Religion Clauses of the First Amendment. Those clauses guaranty "free exercise" (free-

dom of action) and prohibit federal "establishments" (freedom from compulsion). Together they forbid the federal government from enacting regulations to compel the families who own Hobby Lobby and Conestoga from paying for contraception and abortifacients – an action contrary to their religious faith.

CONCLUSION

In these cases, the United States government seeks to compel citizens to act in violation of their religious beliefs. The stated government reason for this compulsion is relatively insignificant – certainly not as compelling as serving in the militia during the Revolutionary War.

The position of the United States is ignores the history of this country and the scope of religious liberties sought the founders sought to protect in the Constitution. Free Exercise of religion includes the freedom from government compulsion to foreswear one's religious principles – at least in the absence of an exceedingly compelling governmental interest. That interest is lacking in this case and the Court should rule in favor of Hobby Lobby and Conestoga in their challenges to the contraceptive mandate.

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Respectfully submitted,

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